



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------------|------------------|
| 09/691,817 | 10/18/2000 | Menno Kalmann | 19459-002200US | 5259 |
| 22470 | 7590 | 11/19/2003 | | |
| HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019 | | | EXAMINER ISABELLA, DAVID J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3738 | |

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/691,817

Applicant(s)

KALMANN ET AL.

Examiner

DAVID J ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 46-54 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 is/are allowed.
- 6) ☒ Claim(s) 21-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

Newly submitted claims 46-54 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the method of claims 46-54 are directed to a method for lining a section of a blood vessels whereas claims 1-45 are directed for replacing a section of a blood vessel inner layer. The newly presented claims fail to require the removal of a section of the inner layer of the blood vessel.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 46-54 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 21-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Plaia et al (5571169).

Plaia, et al discloses a method for replacaing a section of a blood vessel inner layer comprising the steps of forming an incision into the blood vessel. Removing a section of the inner layer of the vessel through the incision. The removal of the predetermined section of the inner layer will leave the unselected portions intact. The unselected portion of the inner layer adjacent the radial or beveled cut is construed to be at least one end flap. Once the selected portion of the inner layer is removed, Plaia et al provides an artificial blood vessel inner layer comprising a diameter arranging element at one end thereof capable of creating an expandable end. The artificial vessels is then inserted into the blood vessel through the incision and positioned adjacent the blood vessel inner layer. The expandable end contains a diameter arranging element for retaining the artificial vessel to the natural vessel. See column 6, lines 55+, column 7, lines 30+, column 12, lines 10+ and 58+ and column 13, lines 10+.

Claim 22, see column 12, lines 12+.

Claim 23, see column 12, lines 6+.

Claim 29, see column 12, lines 12+.

Claim 32, see column 7, lines 10+.

Claim 33, see column 7, lines 10+.

Claims 34-41,45, see column 13, lines 49+.

Claim 42, see column 14, lines 39+.

Claims 43 and 44, see column 14, lines 58+ and column 15, lines 1+.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plaia, et al as applied to claim 21 above, and further in view of Lentz (5522881).

Plaia, et al discloses that the graft may be reinforced with rings and spirals. The reinforcement may be incorporated into the graft at one or both ends. Moreover, Plaia, et al discloses that the helical reinforcement may be embedded in the graft or could be placed internally or externally of the graft itself. Plaia, et al discloses the reinforcement to be made of thermoplastic material. Lentz teaches a stent graft combination with a stent placed in the folded over portion of the graft (figure 4). Since Plaia, et al is not specific as to how the stent is placed on the graft, Lentz teaches one such manner for placement of the stent to the graft. Note, Lentz teaches that the stent can be made from any biocompatible materials including stainless steel, memory metal and thermoplastics (see column 3, lines 30+). To place the stent of Plaia, et al within the folds of the graft so as to ensure proper positioning of the stent with respect to the end portions of the graft would have been obvious from the teachings of Lentz.

The use of any equivalent materials including metal, memory metal or thermoplastic as the material for the ring would have been obvious to one with ordinary skill in the art as being dependent on design and engineering considerations of known equivalents.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **DAVID J ISABELLA** whose telephone number is 703-308-3060. The examiner can normally be reached on **MONDAY-FRIDAY**.

Art Unit: 3738

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 703-308-2111. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



DAVID J ISABELLA
Primary Examiner
Art Unit 3738

Dji
11/17/03